

**RECORD WITHOUT FEE
PURSUANT TO GOV'T CODE § 6103**

Recording Requested by:
Office of the City Attorney
City of Santa Clara, California

When Recorded, Mail to:
Office of the City Clerk
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050

Form per Gov't Code § 27361.6

[SPACE ABOVE THIS LINE FOR RECORDER'S USE]

**AGREEMENT AND COVENANT RUNNING WITH THE LAND
TO MAINTAIN TWO (2) NON-STANDARD DRIVEWAY APPROACHES**
[Restriction on 550 Moreland Way, Santa Clara, CA]

This Agreement and Covenant Running with the Land ("Covenant") is made and entered into on this ____ day of _____, 2008 ("Effective Date"), by Fourth Avenue LLC, a California limited liability company ("Owner"), and the City of Santa Clara, California, a chartered California municipal corporation ("City").

RECITALS

- a. Whereas, Owner is the sole and exclusive owner of real property commonly known as 550 Moreland Way in the City of Santa Clara, California ("Property"), and is shown on the 2007-08 Santa Clara County Property Tax Roll as Assessor's Parcel No. 097-08-109. Property is also known as Parcel A as described in that Grant Deed filed for record on October 12, 2004, as Document No. 18042519, Santa Clara County Records.
- b. Whereas, City is the owner of the public right-of-ways fronting Property.
- c. WHEREAS, Owner wishes to construct two (2) non-standard driveway improvements within the public right-of-ways fronting Property.
- d. WHEREFORE, the Parties enter into the following Covenant:

COVENANT

1. Owner proposes to install and City agrees to permit certain private improvements ("Improvements") in the street right-of-way described and limited to the following:

Two (2) non-standard driveway approaches and curb and gutter, encroaching approximately 13-feet into Moreland Way and Lick Mill Boulevard, public right-of-ways. The boundaries of Improvements encroachment are shown on

attached Exhibit "A", attached hereto and incorporated herein by this reference.

Installation of Improvements shall be at Owner's expense and performed under a Street Opening Permit issued by City.

2. Owner shall maintain, at Owner's expense, Improvements in a safe condition in compliance with City ordinances, rules, regulations, and such terms and conditions as all of the aforesaid are required by City from time to time. City approval of Improvements does not constitute approval on behalf of public utility companies. Approval of public utility companies shall be obtained separately by Owner. If, in the future, Improvements are removed, the area they are removed from shall be left in a safe condition. Removal shall be at Owner's expense and performed under a Street Opening Permit issued by City.
3. Owner shall permit public utility companies, the City, and their respective officers, employees, and agents to enter upon Property so that there is access to the street right-of-way for the purpose of installation, modification, repair, maintenance, removal or replacement of City owned public improvements, facilities or properties situated in the street right-of-way. Owner waives any and all claims for damages or liabilities in connection therewith for property damages incurred as a result of City operations.
4. Owner shall pay City for any damages to City owned facilities caused by the construction or maintenance done by Owner in the street right-of-way. Payment to City shall be made within sixty (60) calendar days of said demand.
5. Owner shall modify, maintain, repair, or remove within sixty (60) days of a written demand of the City Engineer (or his designee) at no cost to the City, Improvements (or portion thereof) which prohibits or interferes with the City's ability to maintain, repair, or replace its public facilities located in the street right-of-way. If owner fails to modify, maintain, repair, or remove Improvements (or portion thereof) within the time frame stated in the written demand of City, City shall cause the work to be done and bill Owner for any and all costs, fees, and expenses related to said work. Payment to City shall be made within sixty (60) calendar days of said demand for payment.
6. If Owner fails to pay City for damage to City facilities or for City caused work the Owner failed to perform upon City demand, City may enforce this Covenant in any manner allowed by law including a levy against the Property.
7. Owner shall defend, indemnify and hold harmless the City, its officers, employees and agents from any claims, demands, loss, liability, injury, damage, expense or cost (including reasonable attorney's fees) however same may be caused, which may be sustained, incurred, or asserted against City because of and/or arising from this Agreement, including but not limited to claims for design defect and/or dangerous condition of public property.
8. As used herein, street right-of-way includes not only the roadway traveled by vehicles but the curb, sidewalk and area between and beyond the sidewalk, if any, to the private property lines or exterior line of right-of-way easements.

9. Each and every covenant made by Owner and/or City in this Covenant is made for the direct benefit of the respective lands described below or the interests in such lands held by the Parties, their heirs, assigns and/or successors in interest, and shall run with said respective lands or interest in lands, and if applicable, the responsibilities and burdens thereof are imposed on and shall run with said respective lands or interest in lands held by the Parties, their heirs, assigns and successors in interest.
10. The lands of Owner which are burdened by this covenant and which will have the responsibility and burden for the modification, maintenance, repair, or removal of the Improvements is the above mentioned Property.
11. The lands of City which are benefited by the covenants included in this Agreement are Moreland Way and Lick Mill Boulevard, public streets owned by City.
12. Enforcement, either to restrain violation or to recover damages, shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant created through this Agreement.
13. Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.
14. Owner represents and warrants to City that they are the owner(s) of Property at the time of their signature hereto, and have the authority to enter into this Covenant and the covenants contained herein, and grant such interests as are necessary to effectuate this Covenant.
15. Wherever the term "Owner" is used, it shall refer collectively to the Owner(s) signing this Covenant, and/or Owner's assigns and successors in interest. City and Owner may be referred to herein collectively as the "Parties" or individually as a "Party". It is the express intent of the Parties hereto to have the benefits and burdens of this covenant run with the land.

[The last paragraph, Paragraph 16, concerning recordation of this Covenant, and the signature blocks are on page 4]

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16. This Covenant shall be recorded by City in the Office of the County Recorder of Santa Clara County.

The Parties acknowledge and accept the terms and conditions of this Covenant as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this Covenant shall become operative on the Effective Date first set forth above.

CITY OF SANTA CLARA, CALIFORNIA
a chartered municipal corporation

FOURTH AVENUE, LLC,
A California limited liability company

JENNIFER SPARACINO
City Manager

1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: 408/615-2210
Fax Number: 408/241-6771

APPROVED AS TO FORM:

HELENE L. LEICHTER
City Attorney

ATTEST:

ROD DIRIDON, JR.
City Clerk

"CITY"

By: _____

Name: **JONATHAN MOSS**

Title: **SENIOR VICE PRESIDENT OF DEVELOPMENT**

By: _____

Name: **WILLIAM R. LEIVA**

Title: **CHIEF FINANCIAL OFFICER**

Mailing Address: **1900 SOUTH NORFOLK ST., # 150**

SAN MATEO, CA 94403

Phone #: **650-931-3400** Fax #: **650-931-3600**

"OWNER" [APN 097-08-109 (2007-08)]

ALL LEGAL OWNER(S) OF PROPERTY MUST SIGN THIS DOCUMENT. IF OWNER(S) IS A CORPORATION, THE COMPLETE LEGAL NAME AND CORPORATE SEAL OF THE CORPORATION AND CORPORATE TITLES OF THE PERSONS SIGNING FOR THE CORPORATION SHALL APPEAR ABOVE. WRITTEN EVIDENCE OF AUTHORITY OF PERSON OR PERSONS EXECUTING THIS DOCUMENT ON BEHALF OF CORPORATION, PARTNERSHIP, OR JOINT VENTURE, OR ANY OTHER ORGANIZATION OTHER THAN A SOLE PROPRIETORSHIP SHALL BE ATTACHED.

ATTACH THE ALL-PURPOSE NOTARY ACKNOWLEDGMENT FORM FOR THE PERSON OR PERSONS EXECUTING THIS DOCUMENT ON BEHALF OF THE OWNER(S).

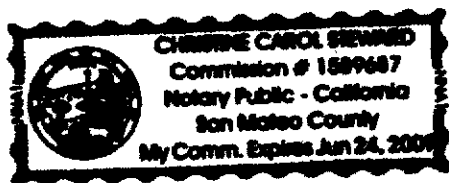
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of SAN MATEO

On JUNE 2, 2008 before me, CHRISTINE CAROL STEWARD, Notary Public,

personally appeared JONATHAN MOSS and William R. Leiva



who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) ~~is~~ are subscribed to the within instrument and acknowledged to me that ~~he~~ ~~she~~ they executed the same in ~~his~~ ~~her~~ their authorized capacity(ies), and that by ~~his~~ ~~her~~ their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: AGREEMENT AND COVENANT RUNNING WITH THE LAND TO MAINTAIN TWO (2) NON STANDARD DRIVEWAY APPROACHES

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER

Top of thumb here

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER

Top of thumb here

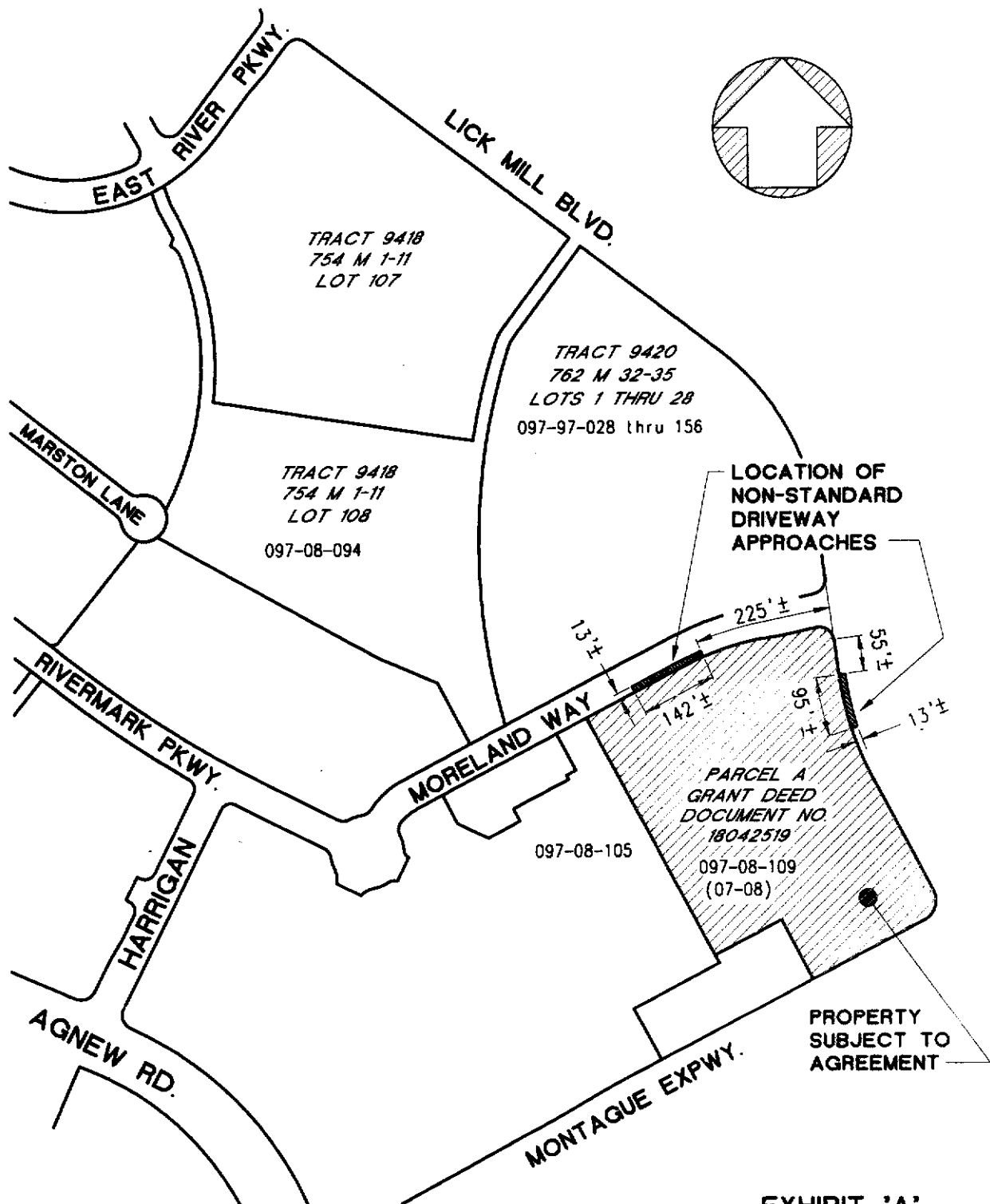


EXHIBIT 'A'

K:\...\LPD\NELSON\SC18301 dw approach.dwg			CITY OF SANTA CLARA		Scale
Revised					NTS
Drawn By	ND	2-25-08	AGREEMENT AND COVENANT RUNNING WITH THE LAND (MAINTAIN TWO (2) NON-STANDARD DRIVEWAY APPROACHES) 550 MORELAND WAY		Ref.
Checked By	DTM	3-28-08			SC 18,301
Approved By	<i>Rajeev Batra</i>	Date 3-28-08			Tracing No.
RAJEEV BATRA DIRECTOR OF PUBLIC WORKS/CITY ENGINEER					11,679-A